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behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

HUGO FUENTES HERNANDEZ, on behalf
of himself and all others similarly situated,

Plaintiffs,

v.

TERRA FERMA LANDSCAPES INC., a
California corporation; TERRA FERMA
LANDSCAPES DESIGN, INC., a California
corporation; WILLAIM BRIAN KOCH, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 20CIV04700

[Assigned to the Hon. Marie S. Weiner in
Dept. 2]

CLASS ACTION

**FIRST AMENDED JOINT
STIPULATION RE: CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: October 26, 2020

Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement
("Settlement" or "Agreement" or "Settlement Agreement") is made by, between and among
plaintiff Hugo Fuentes Hernandez ("Plaintiff"), individually and on behalf of the Settlement
Class, as defined below, on the one hand; and defendants Terra Ferma Landscapes Inc. ("Terra
Ferma Landscapes"), Terra Ferma Design, Inc. ("Terra Ferma Design") and William Brian Koch
("Koch" and collectively with Terra Ferma Landscapes and Terra Ferma Design, "Defendants"),
on the other hand; in the lawsuit entitled *Hugo Fuentes Hernandez v. Terra Ferma Landscapes
Inc., et al.*, San Mateo County Superior Court Case Number 20CIV04700 ("Class Action" or the

1 “Action”). This Agreement is intended by the Parties to fully, finally, and forever resolve,
2 discharge and settle the claims as set forth herein, based upon and subject to the terms and
3 conditions of this Agreement.

4 **1. DEFINITIONS**

5 A. “**Action**” means *Hugo Fuentes Hernandez v. Terra Ferma Landscapes Inc., et al.*,
6 filed in San Mateo County Superior Court, Case No. 20CIV04700.

7 A. “**Aggrieved Employee**” means Class Members working for Defendants as a non-
8 exempt, hourly-paid employee in California during the PAGA Period.

9 B. “**Class Counsel**” means David D. Bibiyan, Diego Aviles and Sara Ehsani-Nia of
10 Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
11 “Plaintiff’s Counsel.”

12 C. “**Class Period**” means the period from October 26, 2016, through October 26,
13 2021.

14 D. “**Court**” means the Superior Court of the State of California for the County of
15 San Mateo.

16 E. “**Defendants**” shall refer to defendants Terra Ferma Landscapes Inc., Terra Ferma
17 Design, Inc., and William Brian Koch.

18 F. “**Employer Taxes**” means employer-funded taxes and contributions imposed on
19 the wage portions of the Individual Settlement Payments under the Federal Insurance
20 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
21 and contributions required of employers, such as for unemployment insurance.

22 G. “**Final Approval Date**” means the later of: (1) the date the Court signs an Order
23 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
24 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
25 have been filed, the date on which they have been resolved or exhausted.

26 H. “**General Release**” means the general release of claims by Plaintiff, which is in
27 addition to Plaintiff’s limited release of claims as a Participating Class Member and Aggrieved
28 Employee.

1 **I. “Gross Settlement Amount”** or “GSA” means a non-reversionary fund in the
2 sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00)¹ and from which all
3 payments under this settlement shall be made, including for the Individual Settlement Payments
4 to Participating Class Members, Individual PAGA Payments to Aggrieved Employees, and the
5 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses
6 to Class Counsel, Settlement Administration Costs, a Service Award to Plaintiff, the LWDA
7 Payment for resolution of Plaintiff’s cause of action for civil penalties under the Labor Code
8 Private Attorneys’ General Act, codified at Labor Code section 2698, *et seq.* (“PAGA”), interest
9 and certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by
10 Defendant separate and apart from the Gross Settlement Amount.

11 **J. “Individual PAGA Payment”** means a payment to an Aggrieved Employee of
12 his or her share of the PAGA Payment.

13 **K. “Individual Settlement Payment”** means a payment to a Participating Class
14 Member of his or her net share of the Net Settlement Amount, excluding any Individual PAGA
15 Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

16 **L. “Individual Settlement Share”** means the gross amount of the Net Settlement
17 Amount that a Settlement Class Member is eligible to receive based on the number of workweeks
18 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
19 submit a timely and valid Request for Exclusion, excluding any Individual PAGA Payment to
20 which he or she may be entitled if he or she is also an Aggrieved Employee.

21 **M. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
22 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
23 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
24 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
25 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
26 (*i.e.*, the LWDA Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00)
27

28 ¹ As the same may be increased in accordance with Paragraph 16, below.

1 will be paid to Aggrieved Employees on a *pro rata* basis based on the number of workweeks
2 worked by Class Members for Defendants during the PAGA Period as non-exempt, hourly-paid
3 employees in California.

4 **N. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
5 that is available for distribution to Participating Class Members after deductions for the Court-
6 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
7 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, applicable
8 taxes, and the LWDA Payment. It excludes the \$2,500 PAGA Payment from which Individual
9 PAGA Payments will be made to Aggrieved Employees.

10 **O. "PAGA Payment"** is the \$2,500 sum from which Individual PAGA Payments
11 shall be paid to Aggrieved Employees in addition to their Individual Settlement Share should
12 they elect not to opt out of the Settlement.

13 **P. "PAGA Period"** means the period from September 16, 2019 to October 26, 2021.

14 **Q. "Participating Class Members"** means all Settlement Class Members who do
15 not submit a timely and valid Request for Exclusion.

16 **R. "Parties"** shall refer to Plaintiff and Defendants collectively.

17 **S. "Plaintiff"** shall refer to Plaintiff Hugo Fuentes Hernandez.

18 **T. "Preliminary Approval Date"** means the date on which the Court enters an
19 Order granting preliminary approval of the Settlement.

20 **U. "Released Parties"** shall mean Defendants and each of their past, present, and
21 future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint
22 ventures and assigns, and each of these entities' past or present directors, officers, employees,
23 partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys,
24 and personal or legal representatives.

25 **V. "Response Deadline"** means the deadline for Settlement Class Members to mail
26 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
27 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
28 and Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive

1 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
2 submitted by the Response Deadline.

3 **W. “Request for Exclusion”** means a written request to be excluded from the
4 Settlement Class pursuant to Section 9.C below.

5 **X. “Service Award”** means monetary amount to be paid to Plaintiff of up to Seven
6 Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will
7 be paid out of the Gross Settlement Amount.

8 **Y. “Settlement Administration Costs”** means all costs incurred by the Settlement
9 Administrator in administration of the Settlement, including, but not limited to, translating the
10 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
11 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments and
12 Individual PAGA Payments, associated taxes and withholdings, providing declarations,
13 generating Individual Settlement Payment and Individual PAGA Payment checks, generating
14 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
15 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
16 of litigation costs and expenses, to Plaintiff for Plaintiff’s Service Award, and to the LWDA from
17 the LWDA Payment, providing weekly reports of opt-outs, objections and related information,
18 and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant
19 to the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
20 \$7,250. If the actual amount of the Settlement Administration Costs is less than \$7,250, the
21 difference between \$7,250 and the actual Settlement Administration Costs shall be a part of the
22 Net Settlement Amount. If the Settlement Administration Costs exceed \$7,250 then such excess
23 will be paid solely from the Gross Settlement Amount and Defendants will not be responsible
24 for paying any additional funds in order to pay these additional costs.

25 **Z. “Settlement Administrator”** means the Third-Party Administrator chosen by
26 Plaintiff that will be responsible for the administration of the Settlement including, without
27 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
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1 Payments to be made by Defendants from the Gross Settlement Amount and related matters under
2 this Agreement.

3 AA. "Settlement Class", "Settlement Class Members" or "Class Members" means
4 all current and former non-exempt, hourly paid employees who worked in California for
5 Defendants at any time during the Class Period.

6 BB. "Workweeks" means any week in which a Class Member was employed by
7 Defendants using hire dates, termination dates, and rehire dates, in a non-exempt, hourly-paid
8 position during the Class Period. If a Settlement Class Member disputes his/her Individual
9 Settlement Share and/or Individual PAGA Payment, it shall be termed a "Workweek Dispute."

10 **2. BACKGROUND**

11 A. On October 26, 2020, Plaintiff filed a putative wage-and-hour class action against
12 Defendants in the Superior Court of California for the County of San Mateo, Case Number
13 20CIV04700. Plaintiff alleged that during the Class Period, with respect to himself and the
14 Settlement Class Members, Defendants, *inter alia*, failed to pay the Settlement Class Members'
15 overtime wages and minimum wages; failed to provide compliant meal and rest periods and
16 associated premium payments; failed to issue compliant and accurate itemized wage statements;
17 failed to timely pay all wages due and owing at the time of termination or resignation; failed to
18 indemnify Class Members; and engaged in unfair competition due to the alleged Labor Code
19 violations.

20 B. On September 16, 2020, Plaintiff filed with the LWDA and served on Defendants
21 a notice under Labor Code section 2699.3 (the "PAGA Notice") stating Plaintiff intended to serve
22 as a proxy of the LWDA to recover civil penalties for Aggrieved Employees. The PAGA Notice
23 includes violations of law pled in the Class Action, in addition to a request for penalties for failure
24 to comply with Labor Code sections 204, 227.3, 246, 404, 432, 1174, 1198.5, and 2810.5.

25 C. On January 25, 2021, when 65 days passed without any communication from the
26 LWDA, Plaintiff filed a first amended complaint to the Action, adding a cause of action under
27 PAGA against Defendants. Specifically, Plaintiff, as a proxy of the LWDA, sought PAGA civil
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1 penalties from Defendants under Labor Code sections 210, 226.3, 558, 1197.1 and 2699 for the
2 Labor Code violations set out in the PAGA Notice for herself and other Aggrieved Employees.

3 **D.** Shortly after the filing of this Action, the Parties agreed to exchange informal
4 discovery and attend mediation. Prior to mediation, Class Counsel was provided with, among
5 other things: (1) a sampling of time and payroll records, amounting to 46 of 162 Class Members
6 during the Class Period; (2) hire and termination dates that allowed calculation of the number of
7 Workweeks and Class Members during the Class Period; (3) three Employee Handbooks; (4) a
8 standalone meal and rest break policy dated September of 2019; (5) a standalone meal and rest
9 break policy Dated January of 2020; and (5) Class Members' contact information.

10 **E.** On August 12, 2021, the Parties participated in a mediation before Lynn Frank
11 Esq., a well-regarded mediator experienced in mediating complex civil disputes. With the aid of
12 the mediator's evaluation and after weeks of further negotiations, the Parties reached the
13 Settlement to resolve the Action. This Agreement supersedes any prior writings or
14 understandings between the Parties in connection with the subject matter of this Agreement.

15 **F.** Class Counsel has conducted significant investigation of the law and facts relating
16 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
17 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
18 the sharply contested issues involved, the expense and time necessary to litigate the Action
19 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
20 adverse outcome, the uncertainties of complex litigation, the information learned through
21 informal discovery and interviews with Class Members regarding Plaintiff's allegations, and the
22 substantial benefits to be received by the Settlement Class Members.

23 **G.** Defendants have concluded that, because of the substantial expense of defending
24 against the Action, the length of time necessary to resolve the issues presented herein, the
25 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
26 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
27 claims asserted against them in the Action. However, Defendants nevertheless desire to settle
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1 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
2 litigation and for the purpose of putting to rest the controversies engendered by the Action.

3 **H.** This Agreement is intended to and does effectuate the full, final, and complete
4 resolution of all Released Claims of Plaintiff, Aggrieved Employees, and Participating
5 Settlement Class Members.

6 **3. JURISDICTION**

7 The Court has jurisdiction over the Parties and the subject matter of the Action. The
8 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
9 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
10 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
11 pursuant to California Rule of Court, rule 3.769, subdivision (h).

12 **4. STIPULATION OF CLASS CERTIFICATION**

13 The Parties stipulate to the certification of the Settlement Class under this Agreement for
14 purposes of settlement only. If the Court does not grant Preliminary and Final Approval of the
15 Class Action Settlement (and such failure to grant is not thereafter cured in a timely manner), the
16 parties will not stipulate to Class Certification, and this Settlement Agreement shall be void and
17 of no force or effect. Further, in the event the court does not approve this Settlement Agreement,
18 or this settlement becomes void pursuant to any other provision of this agreement or the final
19 settlement agreement, any monies paid into the qualified settlement fund shall be returned to
20 Defendants within twenty-one (21) calendar days.

21 **5. MOTION FOR PRELIMINARY APPROVAL AND PROOF OF FINANCIAL**
22 **ABILITY TO FUND CLASS LITIGATION AND CLASS SETTLEMENT.**

23 As a material term underlying this Settlement, Defendants agreed to provide financial
24 proof, including, at minimum, three years of tax returns, to counsel for Plaintiff, for proof
25 regarding their ability to fund a class litigation and class settlement. The tax returns will be
26 returned to Defendants after review and only for purposes of preparing necessary settlement
27 documents for approval before the appropriate court. The tax returns are to remain privileged and
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1 confidential at all times, and produced and subject to the mediation confidentiality provisions of
2 California Evidence code sections 1118-1129, 1152, *et seq.*

3 By signing hereinbelow Plaintiff, along with Counsel for Plaintiff, acknowledge that they
4 have reviewed and returned the tax returns referenced immediately hereinabove, and that
5 Defendants have complied with all obligations regarding tax returns under the MOU and this
6 Settlement.

7 **6. STATEMENT OF NO ADMISSION**

8 a. Defendants deny any wrongdoing of any sort and further deny any liability to
9 Plaintiff and the Settlement Class with respect to any claims or allegations asserted in the Action.
10 This Agreement shall not be deemed an admission by Defendants of any claims or allegations
11 asserted in the Action. Except as set forth elsewhere herein, in the event that this Agreement is
12 not approved by the Court and no cure is successful, or any appellate court, , or otherwise fails
13 to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way
14 any claims, rights or remedies, or defenses in the Action, and Defendants will not be deemed to
15 have waived, limited, or affected in any way any of its objections or defenses in the Action. The
16 Parties shall be restored to their respective positions in the Action prior to the entry of this
17 Settlement. Defendants and the Released Parties deny that they have engaged in any unlawful
18 activity, have failed to comply with the law in any respect, have any liability to anyone under the
19 claims asserted in the Action, or that but for the Settlement a class should be certified in the
20 Action. This Agreement is entered into solely for the purpose of compromising highly disputed
21 claims, and in the interest of finality, given the substantial expense litigating this matter through
22 trial and resulting increase in costs and fees for all involved parties. Nothing in this Agreement
23 is intended or will be construed as an admission of liability or wrongdoing by Defendants or the
24 Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any
25 defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiff and
26 Defendants were willing to settle the Action will have no bearing on, and will not be admissible
27 in connection with, any litigation (other than solely in connection with effectuating the Settlement
28 pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by

1 Defendants of any liability or wrongdoing as to Plaintiff, Class Members, Aggrieved Employees,
2 or any other person, and Defendants specifically disclaim any such liability or wrongdoing.
3 Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter
4 or any other matter that a class action is appropriate. The Parties have entered into this settlement
5 with the intention of avoiding further disputes and litigation with the attendant inconvenience,
6 expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff
7 that Plaintiff's claims do not have merit or that class action is inappropriate.

8 **7. RELEASE OF CLAIMS**

9 **A. Release by All Participating Class Members and/or Aggrieved Employees.**

10 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
11 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
12 Settlement Amount (as the same may be escalated pursuant to this Agreement), Plaintiff and all
13 Participating Class Members release the Released Parties of all claims against the Released
14 Parties asserted in the Complaint filed in the Action, or any and all claims that may be asserted
15 against the Released Parties, to the fullest extent permitted by law, based on the factual
16 allegations in the First Amended Complaint filed in the Action, as follows: For the duration of
17 the Class Period, the release includes (a) all claims for failure to pay overtime wages; (b) all
18 claims for failure to pay minimum wages; (c) all claims for failure to provide compliant meal and
19 rest periods and associated premium pay; (d) failure to timely pay all wages due upon termination
20 or resignation; (e) all claims for non-compliant wage statements; (f) failure to indemnify work
21 related expenses; (g) all claims asserted through California Business & Professions Code §
22 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended
23 Complaint; and (h) Labor Code sections for which there are class allegations alleged to have been
24 violated in the First Amended Complaint, including Labor Code sections 201, 202, 203, 226,
25 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1199 and 2802 ("Class Released Claims"). For
26 Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims for
27 civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558, 1197.1, and
28 2699 based on the factual allegations and Labor Code sections alleged to have been violated in

1 the First Amended Complaint, which includes, without limitation, (a) all claims for failure to pay
2 overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to
3 provide compliant meal and rest periods and associated premium pay; (d) failure to timely pay
4 all wages due upon termination or resignation; (e) all claims for non-compliant wage statements;
5 (f) failure to indemnify work related expenses, as well as Labor Code sections 201, 202, 203,
6 204, 226, 226.3, 226.7, 227.3, 246, 432, 510, 512, 1174, 1194, 1194.2, 1197, 1198.5, 1197.1,
7 2802 and 2810.5, as well as 218.6 and 558 to the extent they are tethered to the Class Released
8 Claims or the Labor Code sections implicated in the PAGA Notice ("PAGA Released Claims")
9 and, collectively with Class Released Claims, "Released Claims").

10 **B. General Release.**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
12 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
13 Settlement Amount (as the same may be escalated pursuant to this Agreement) and Employers'
14 Taxes necessary to effectuate the Settlement, in addition to the Released Claims, Plaintiff makes
15 the additional following General Release: Plaintiff releases the Released Parties from all claims,
16 demands, rights, liabilities and causes of action of every nature and description whatsoever,
17 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for
18 violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in
19 connection with any act or omission of the Released Parties through the date of full execution of
20 this Agreement in connection with his employment or the termination thereof which may legally
21 be released by way of this Agreement. Moreover, effective only upon the entry of an Order
22 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
23 Settlement Administrator of the full Gross Settlement Amount (as the same may be escalated
24 pursuant to this Agreement) and Employers' Taxes necessary to effectuate the Settlement, in
25 addition to the Released Claims, Plaintiff stipulates and agrees that that Plaintiff shall be deemed
26 to have, and by operation of the Final Judgment and payment to the Settlement Administrator
27 shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
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1 provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar
2 provision under federal or state law, which provides:

3 A general release does not extend to claims that the creditor or
4 releasing party does not know or suspect to exist in his or her
5 favor at the time of executing the release, and that if known by
6 him or her, would have materially affected his or her
7 settlement with the debtor or released party.

8 **8. SETTLEMENT ADMINISTRATOR**

9 Plaintiff and Defendant, through their respective counsel, have selected Phoenix
10 Settlement Administrators to administer the Settlement, which includes but is not limited to
11 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
12 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
13 expenses of the Settlement Administrator, currently estimated to be \$7,250 will be paid from the
14 Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$7,250 the
15 difference will remain a part of the Net Settlement Amount.

16 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION**
17 **PROCESS**

18 **A. Notice to the Settlement Class Members.**

19 (1) Within seven (7) calendar days after the Preliminary Approval Date,
20 Defendants' Counsel shall provide the Settlement Administrator with information with respect
21 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
22 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
23 Security Number in Defendant's possession, custody, or control; and (3) the hire dates and
24 termination dates for each Settlement Class Member ("Class List"). The Settlement
25 Administrator shall perform an address search using the United States Postal Service National
26 Change of Address ("NCOA") database and update the addresses contained on the Class List
27 with the newly found addresses, if any. Within seven (7) calendar days of receiving the Class
28 List from Defendant, the Settlement Administrator shall mail the Class Notice in English and
Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current

1 mailing address information available. The Settlement Administrator shall maintain a list with
2 names and all addresses to which notice was given, and digital copies of all the Settlement
3 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
4 least four (4) years from the Final Approval Date. Such information shall be available to Class
5 Counsel and Defendant's Counsel upon request, and any information provided pursuant to this
6 Section shall be kept in compliance with the confidentiality provision and requirements of
7 Section 17.H hereinbelow.

8 (2) The Class Notice will set forth:

- 9 (a) the Settlement Class Member's estimated payment and the basis
10 for it;
- 11 (b) the information required by California Rule of Court, rule 3.766,
12 subdivision (d);
- 13 (c) the material terms of the Settlement;
- 14 (d) the proposed Settlement Administration Costs;
- 15 (e) the definition of the Settlement Class;
- 16 (f) a statement that the Court has preliminarily approved the
17 Settlement;
- 18 (g) how the Settlement Class Member can obtain additional
19 information, including contact information for Class Counsel;
- 20 (h) information regarding opt-out and objection procedures;
- 21 (i) the date and location of the Final Approval Hearing; and
- 22 (j) that the Settlement Class Member must notify the Settlement
23 Administrator no later than the Response Deadline if the
24 Settlement Class Member disputes the accuracy of the number of
25 Workweeks as set forth on his or her Class Notice ("Workweek
26 Dispute"). If a Settlement Class Member fails to timely dispute
27 the number of Workweeks attributed to him or her in conformity
28 with the instructions in the Class Notice, then he or she shall be

1 deemed to have waived any objection to its accuracy and any claim
2 to any additional settlement payment based on different data.

3 (3) If a Class Notice from the initial notice mailing is returned as
4 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
5 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
6 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
7 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
8 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
9 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
10 Administrator with a forwarding address before the Response Deadline shall be promptly re-
11 mailed to the forwarding address affixed thereto.

12 (4) No later than seven (7) calendar days from the Response Deadline, the
13 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
14 completion of the notice process, including the number of attempts to obtain valid mailing
15 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
16 and copies of all Requests for Exclusion and objections/comments received by the Settlement
17 Administrator.

18 **B. Objections.**

19 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
20 Class Members) may object to the Settlement. In order for any Settlement Class Member to
21 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
22 objection to the Settlement Administrator at the address or phone number provided on the Class
23 Notice and postmarked no later than the Response Deadline. The Settlement Administrator shall
24 email a copy of the Objection forthwith to Class Counsel and Defendant's Counsel. Defendants'
25 Counsel shall lodge a copy of the Objection with the Court at least sixteen (16) court days before
26 the hearing on the Motion for Final Approval. The Objection should set forth in writing: (1) the
27 objector's name and address, and (2) the reason(s) for the Objection, along with whatever legal
28 authority, if any, the objector asserts in support of the Objection. If a Settlement Class Member

1 objects to the Settlement, the Settlement Class Member will remain a member of the Settlement
2 Class and if the Court approves this Agreement, the Settlement Class Member will be bound by
3 the terms of the Settlement in the same way and to the same extent as a Settlement Class Member
4 who does not object. The date of mailing of the Class Notice to the objecting Settlement Class
5 Member shall be conclusively determined according to the records of the Settlement
6 Administrator. Settlement Class Members need not object in writing to be heard at the Final
7 Approval Hearing; they may object or comment in person at the hearing at their own expense.
8 Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up
9 to five (5) court days before the Final Approval Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
14 To be valid, a Request for Exclusion must include the Class Member's name, social security
15 number and signature and the following statement or something to its effect: "Please exclude me
16 from the Settlement Class in the *Hugo Fuentes Hernandez v. Terra Ferma Landscapes Inc.*
17 matter" or a statement of similar meaning. The Settlement Administrator shall immediately
18 provide copies of all Requests for Exclusion to Class Counsel and Defendants' Counsel and shall
19 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided
20 in advance of the Final Approval Hearing. Any Settlement Class Member who requests
21 exclusion using this procedure will not be entitled to receive an Individual Settlement Payment
22 from the Settlement and will not be bound by the Settlement Agreement or have any right to
23 object to, appeal, or comment on the Settlement, unless he or she is also an Aggrieved Employee
24 and, as to Aggrieved Employees, whether or not he or she objects, he or she will still receive his
25 or her Individual PAGA Payment and be bound by the release encompassed by the PAGA
26 Released Claims. Any Settlement Class Member who does not opt out of the Settlement by
27 submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement,
28 including those pertaining to the Released Claims, as well as any Judgment that may be entered

1 by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot
2 submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an
3 objection and a Request for Exclusion, the Request for Exclusion will control and the Objection
4 will be void. Settlement Class Members who worked during the PAGA Period that submit a valid
5 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
6 Individual PAGA Payments, and will be bound by the release encompassed by the PAGA
7 Released Claims defined herein.

8 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

9 Class Members will have an opportunity to dispute the information provided in their Class
10 Notice. To the extent Class Members dispute the number of Workweeks to which they have been
11 credited in the Class Period and/or PAGA Period, Class Members may produce evidence to the
12 Settlement Administrator showing that such information is inaccurate. Absent evidence
13 rebutting Defendant's records, Defendant's records will be presumed determinative. However,
14 if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate
15 the evidence submitted by the Class Member and will make the final decision as to the number
16 of Weekly Pay Periods that should be applied. All such disputes are to be resolved not later than
17 ten (10) calendar days after the Response Deadline or Defendant's records will be deemed
18 accurate.

19 **E. Extension of Response Deadline for Remailing**

20 If a Class Member's notice is re-mailed, the Class Member shall have forty-five (45) days
21 from the re-mailing in which to postmark a Request for Exclusion, written Objection.

22 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
23 **MEMBERS**

24 Individual Settlement Payments will be calculated and distributed to Participating Class
25 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
26 Members' respective number of Workweeks during the Class Period. Individual PAGA
27 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
28 on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during

1 the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual
2 PAGA Payments to PAGA Aggrieved Employees will be made as follows:

3 **A.** The Settlement Administrator will determine the total number of Workweeks
4 worked by each Settlement Class Member during the Class Period ("Class Member's
5 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
6 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
7 Administrator will determine the total number of Workweeks worked by each Aggrieved
8 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
9 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
10 ("PAGA Workweeks").

11 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
12 Settlement Administrator will use the following formula: Individual Settlement Share =
13 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

14 **C.** To determine each Participating Class Member's Individual Settlement Share,
15 the Settlement Administrator will determine the aggregate number of Workweeks worked by
16 all Participating Class Members during the Class Period ("Participating Class Workweeks")
17 and use the following formula: Individual Settlement Share = (Participating Class Member's
18 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

19 **D.** The net amount of the Individual Settlement Share is to be paid out to
20 Participating Class Members by way of check and is referred to as "Individual Settlement
21 Payment(s)."

22 **E.** To determine each Aggrieved Employee's Individual PAGA Payment the
23 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
24 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x \$2,500.00 (the
25 PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check. The
26 Settlement payment for a Participating Class Member who is also an Aggrieved Employee will
27 therefore include the Participating Class Member's Individual Settlement Share and Individual
28 PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits

1 a valid Request for Exclusion will nevertheless be bound by the release encompassed by the
2 PAGA Released Claims and will still receive their Individual PAGA Payment.

3 **11. DISTRIBUTION OF PAYMENTS**

4 **A. Distribution of Individual Settlement Payments and Individual PAGA**
5 **Payments**

6 Participating Class Members will receive an Individual Settlement Payment and
7 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
8 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
9 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
10 calendar days after expiration of the 180-day period, checks for such payments shall be
11 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
12 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid
13 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
14 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,
15 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in San Mateo
16 County. The Settlement Administrator shall prepare a report regarding the distribution plan
17 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
18 by Class Counsel along with a proposed amended judgment that is consistent with the
19 provisions of Code of Civil Procedure section 384.

20 **B. Funding of Settlement.**

21 Defendants will make monthly payments to the Settlement Administrator for deposit in
22 an interest-bearing qualified settlement account ("QSF") with an FDIC insured banking
23 institution, for distribution in accordance with this Settlement Agreement and the Court's orders
24 and subject to the conditions described herein. Eighteenth monthly payments must be made by
25 Defendants on the following schedule: (i) October 15, 2021: 1/18 of the Gross Settlement
26 Amount (1st Payment); (ii) November 15, 2021: 1/18 of the Gross Settlement (2nd Payment);
27 (iii) December 15, 2021: 1/18 of the Gross Settlement (3rd Payment); (iv) January 15, 2022: 1/18
28 of the Gross Settlement (4th Payment); (v) February 15, 2022: 1/18 of the Gross Settlement (5th

1 Payment); (vi) March 15, 2022: 1/18 of the Gross Settlement (6th Payment); (vii) April 15, 2022:
2 1/18 of the Gross Settlement (7th Payment); (viii) May 15, 2022: 1/18 of the Gross Settlement
3 (8th Payment); (ix) June 15, 2022: 1/18 of the Gross Settlement (9th Payment); (x) July 15, 2022:
4 1/18 of the Gross Settlement (10th Payment); (xi) August 15, 2022: 1/18 of the Gross Settlement
5 (11th Payment); (xii) September 15, 2022: 1/18 of the Gross Settlement Amount (12th Payment);
6 (xiii) October 15, 2022: 1/18 of the Gross Settlement Amount (13th Payment); (xiv) November
7 15, 2022: 1/18 of the Gross Settlement Amount (14th Payment); (xv) December 15, 2022: 1/18
8 of the Gross Settlement Amount (15th Payment); (xvi) January 15, 2023: 1/18 of the Gross
9 Settlement Amount (16th Payment); (xvii) February 15, 2023: 1/18 of the Gross Settlement
10 Amount (17th Payment); (xviii) March 15, 2023: 1/18 of the Gross Settlement Amount (Final
11 Payment). In addition, as part of the Final Payment, Defendants shall include Defendants' share
12 of taxes owed on the wages portion of the settlement, which shall be determined by the Settlement
13 Administrator.

14 Payments from the QSF shall be made for (1) the Service Award to Plaintiff as specified
15 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
16 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
17 Administrator Costs, as specified in this Agreement and approved by the Court; (4) the LWDA
18 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
19 Payments to Aggrieved Employees. The balance any and any accrued interest thereon remaining
20 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
21 made to Participating Class Members, less applicable taxes and withholdings, aside from \$2,500
22 from which Individual PAGA Payments will be paid in accordance with this Settlement. All
23 interest accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis
24 to Participating Class Members. Defendants will not oppose the reasonableness of these requests.
25 Any reduction by the Court of these requests will revert to the Class Members who do not opt
26 out.

27 ///

28 ///

1 **C. Time for Distribution.**

2 No more than seven (7) calendar days after the final payment of the full Gross Settlement
3 Amount (as the same may be escalated by Paragraph 16 below) by Defendant, as well as
4 Employer Taxes, the Settlement Administrator shall distribute all payments due under the
5 Settlement, including the Individual Settlement Payments to Participating Class Members and
6 Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved payments
7 for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class
8 Counsel, administration costs to the Settlement Administrator, and the LWDA Payment.

9 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

10 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
11 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or One Hundred Five
12 Thousand Dollars and Zero Cents (\$105,000.00) unless the Gross Settlement Amount is escalated
13 pursuant to this Agreement. Class Counsel shall further apply for, and Defendants shall not
14 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
15 with Class Counsel's prosecution of this matter as set forth by declaration from Class Counsel
16 including testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents
17 (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
18 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain
19 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein
20 includes, without limitation, all time and expenses expended by Class Counsel (including any
21 appeals therein), but excludes any attorneys' fees that may be sought for failure by Defendants
22 to comply with this Agreement. Should the Court approve attorneys' fees and/or litigation costs
23 and expenses in amounts that are less than the amounts provided for herein, then the unapproved
24 portion(s) shall be revert to and become a part of the Net Settlement Amount.

25 **13. SERVICE AWARD TO PLAINTIFF**

26 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
27 to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in
28 and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the

1 Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves
2 Service Award to Plaintiff in less than the amounts sought herein, then the unapproved portion(s)
3 shall be a part of the Net Settlement Amount.

4 **14. TAXATION AND ALLOCATION**

5 A. Each Individual Settlement Share shall be allocated as follows: 20% as wages
6 (to be reported on an IRS Form W2); and 80% as interest, premiums, and penalties (to be
7 reported on an IRS Form 1099). The Individual PAGA Payments to the Aggrieved
8 Employees shall be characterized as non-wages (to be reported on an IRS Form 1099). The
9 Parties agree that the employee's share of taxes and withholdings with respect to the wage
10 portion of the Individual Settlement Share will be withheld from the Individual Settlement
11 Share in order to yield the Individual Settlement Payment. The amount of federal income tax
12 withholding will be based upon a flat withholding rate for supplemental wage payments in
13 accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax
14 withholding will also be made pursuant to applicable state and/or local withholding codes or
15 regulations.

16 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
17 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
18 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
19 thereunder, or other applicable tax law, is changed after the date of this Agreement, the
20 processes set forth in this Section may be modified in a manner to bring Defendants into
21 compliance with any such changes.

22 C. All Employer Taxes shall be paid by Defendants separate, apart and above d
23 from the Gross Settlement Amount. Defendants shall remain liable to pay the employer's
24 share of payroll taxes as described above.

25 D. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
26 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
27 be relied upon as such within the meaning of United States Treasury Department Circular 230
28 (31 C.F.R. Part 10, as amended) or otherwise.

1 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

2 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
3 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
4 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the
5 LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement
6 Amount (\$2,500.00), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon
7 their respective Workweeks in the PAGA Period (*i.e.*, the Individual PAGA Payments).

8 **16. COURT APPROVAL**

9 This Agreement is contingent upon an order by the Court granting Final Approval of the
10 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event
11 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the
12 Parties shall be restored to their respective positions in the Action prior to entry of this Settlement
13 and all settlement amounts forwarded shall be returned to Defendant as provided herein. If this
14 Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it
15 shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the
16 Court reserves any authority to issue any appropriate orders when denying approval; and/or (b)
17 there are any terms and conditions in this Settlement Agreement specifically stated to survive the
18 Settlement Agreement being voided or not approved, and which control in such an event.

19 **17. INCREASE IN WEEKLY PAY PERIODS**

20 Defendants represent that there are no more than 8,475 workweeks worked during the
21 Class Period. In the event the number of workweeks worked increases by more than 10% or
22 847 workweeks worked, then the GSA shall be increased proportionally by the workweeks
23 worked in excess of 9,322 multiplied by the workweek value. The workweek value shall be
24 calculated by dividing the GSA by 8,475. The Parties agree that the workweek value amounts
25 to and the settlement amounts to \$35.30 per workweek (\$300,000 / 8,475 workweeks). Thus,
26 for example, should there be 10,000 workweeks in the Class Period, then the GSA shall be
27 increased by \$24,001.20 (10,000 workweeks – 9,322 workweeks x \$35.40/workweek.)

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1 **18. NOTICE OF JUDGMENT**

2 In addition to any duties set out herein, the Settlement Administrator shall provide
3 notice of the Final Judgment entered in the Action by posting the same on its website for at
4 least three (3) years after the Judgment becomes final.

5 **19. MISCELLANEOUS PROVISIONS**

6 **A. Interpretation of the Agreement.**

7 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
8 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
9 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
10 oral or written representations or terms shall modify, vary or contradict its terms. In entering
11 into this Agreement, the Parties agree that this Agreement is to be construed according to its
12 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
13 interpreted and enforced under the laws of the State of California, both in its procedural and
14 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
15 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
16 in the Superior Court of the State of California for the County of San Mateo, and Plaintiff and
17 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
18 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
19 Class; and Defendants participated in the negotiation and drafting of this Agreement and had
20 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
21 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
22 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
23 approved by the Court.

24 **B. Further Cooperation.**

25 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and
26 execute all documents, to seek the necessary approvals from the Court, and to do all things
27 reasonably necessary to consummate the Settlement as expeditiously as possible.

28 ///

1 **C. Counterparts.**

2 The Agreement may be executed in one or more actual or non-original counterparts, all
3 of which will be considered one and the same instrument and all of which will be considered
4 duplicate originals.

5 **D. Authority.**

6 Each individual signing below warrants that he or she has the authority to execute this
7 Agreement on behalf of the party for whom or which that individual signs.

8 **E. No Third-Party Beneficiaries.**

9 Plaintiff, Participating Class Members, Aggrieved Employees, Class Counsel, and
10 Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

11 **F. Deadlines Falling on Weekends or Holidays.**

12 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
13 or legal holiday, that deadline shall be continued until the following business day.

14 **G. Severability.**

15 In the event that one or more of the provisions contained in this Agreement shall for any
16 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
17 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
18 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
19 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

20 **H. Confidentiality.**

21 The Parties hereby expressly agree that any settlement that occurs between the Parties,
22 including this Settlement Agreement and any contact information for Class Members provided
23 by Defendants to the Settlement Administrator, shall remain confidential until a stipulation for
24 preliminary approval is filed with the Court. The Settlement Administrator shall not use contact
25 information for Class Members for any purpose other than this Settlement, and shall employ
26 reasonable measures to safeguard such information. To the extent the Settlement Administrator
27 has a service agreement, Class Counsel shall ensure that provision is made therein for the
28 confidentiality of Class Member information.

1 **I. No Solicitation.**

2 The Parties and their respective counsel represent that neither the Parties nor their
3 respective counsel have or will solicit or otherwise encourage directly or indirectly any Class
4 Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the
5 Settlement by way of a Request for Exclusion.

6 **J. No Prior Assignments.**

7 The Parties represent, covenant and warrant that they have not directly or indirectly
8 assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or
9 entity and portion of any liability, claim, demand, action, cause of action, or right released and
10 discharged in this Settlement.

11 **M. No Tax Advice:**

12 Neither Class Counsel nor Defendant's Counsel intend anything contained in this
13 Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement
14 be relied upon as such within the meaning of United States Treasury Department Circular 230
15 (31 CFR Part 10, as amended) or otherwise.

16 **N. Agreement Binding on Successors.**

17 This Agreement will be binding upon, and inure to the benefit of, the successors of each
18 of the Parties.

19 **O. Applicable Law.**

20 All terms and conditions of this Agreement and its exhibits will be governed by and
21 interpreted according to the laws of the State of California.

22 **P. Cooperation in Drafting.**

23 The Parties have cooperated in the drafting and preparation of this Agreement. This
24 Agreement will not be construed against any Party on the basis that the Party was the drafter or
25 participated in the drafting.

26 **Q. Fair Settlement.**

27 The Parties and their respective counsel believe and warrant that this Agreement reflects
28 a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement

1 through arms-length negotiations, taking into account all relevant factors, current and potential.

2 **R. Headings.**

3 The descriptive heading of any section or paragraph of this Agreement is inserted for
4 convenience of reference only and does not constitute a part of this Agreement.

5 **S. Continuing Jurisdiction.**

6 The Court shall retain continuing jurisdiction over the Action under CCP section 664.6
7 to ensure the continuing implementation of this Agreement and enforcement of the Settlement
8 until performance in full of the terms of this Settlement. Attorneys' fees, costs, and other
9 appropriate sanctions may be granted for any material breach of this Agreement by either party.

10 **IT IS SO AGREED:**

11
12 Dated: Feb 15, 2022, 2021

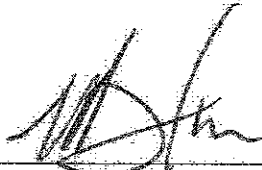

Hugo Fuentes (Feb 15, 2022 13:32 PST)

HUGO FUENTES HERNANDEZ
Plaintiff and Class Representative

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17 Dated: 2/10/22, 2021


TERRA FERMA LANDSCAPES INC.
Defendant
By:
Its:

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20
21
22 Dated: 2/10/22, 2021


TERRA FERMA LANDSCAPES DESIGN,
INC.
Defendant
By:
Its:

1 Dated: 2/10/22, 2021


WILLIAM BRIAN KOCH

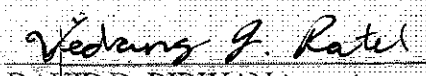
Defendant

By:

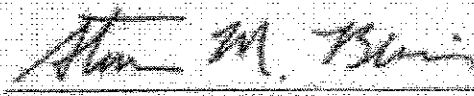
Its:

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7 APPROVED AS TO FORM ONLY:

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9 Dated: February 28, ²⁰²²₂₀₂₁


DAVID D. BIBIYAN; vedang J. Patel
DIEGO AVILES
SARA EHSANI-NIA
Bibiyan Law Group, P.C.
Counsel for Plaintiff Hugo Fuentes
Hernandez

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11
12
13
14
15 Dated: February 14, 2022


STEVEN M. BERKI
Corey, Luzaich, de Ghetaldi & Riddle LLP
Counsel for Defendants Terra Ferma
Landscapes Inc, Terra Ferma Landscapes
Design, Inc., and William Brian Koch